IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2302 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABHAYKUMAR J SHAH

Versus

GOVT.OF INDIA & OTHERS

Appearance:

1. Special Civil Application No. 2302 of 1993

MR DA BAMBHANIA for Petitioner No. 1

MR BIPIN I MEHTA for Respondents No. 1-2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 10/12/2001

ORAL JUDGEMENT

1. This petition has been filed for a direction to the respondents authorities to grant pensionary benefits and anciliary benefits to the petitioner from the date of relieving and to continue to grant the same as if the

petitioner has been eligible from the date of relieving.

2. The petitioner joined the services as Sep/Driver with AMC Unit of the respondents authorities and was enrolled on 18.11.1962. He transferred to reserve establishment from 18.11.1969. As he remained on unauthorised absent for 245 days he was punished for that period. Thereafter the petitioner was called on duty and he remained on colour duty from 14.9.1971 to 20.5.1972 thereafter he was transferred to reserve establishment and he relieved from the reserve establishment from 1.12.1977. For the pensionary benefits the petitioner is required to serve seven years on colour duty and 8 years in reserve establishment. The petitioner, as he remained unauthorised absent for 245 days, his services were not considered for pensionary benefits as he had not completed seven years colour duty. The petitioner had made representations to different authorities but the authorities have refused to grant the pensionary benefits as the petitioner remained on unauthorised absence for 245 days. Hence this petition has been filed for a direction to the authorities concerned.

3. I have heard the learned counsels for the parties and perused the relevant record. The contention of the learned counsel for the respondents is that the petitioner is not entitled to pension as he has not completed the service of 15 years as prescribed under the Regulations of pension. The petitioner was engaged as a driver in Army Medical Corps under the terms of engagement of 15 years and he remained absent without leave w.e.f. 5.2.1965 to 19.10.1965 i.e. 245 days and he has not completed the service of 15 years which is a qualified service for grant of pension. The petitioner was required to render 7 years of colour service and 8 years as on reservation establishment. The petitioner was transferred to reservation establishment and struck off from the strength of the corps w.e.f. 18.11.1969 though the character of the petitioner was assessed as very good. The petitioner was reported for reservation training on 18.9.1971 and he was retransferred to colour service w.e.f. 13.10.1971 till again he was retransferred to reservation establishment w.e.f. 18.3.1972. He again reported for biennial reservation training w.e.f. 6.9.1974 to 4.10.1974 and 5.6.1976 to 2.7.1976. He was retired from service on fulfilling the condition of engagement of 15 years under Army Rule 139(3)(III)(i) w.e.f. 1.12.1977. The minimum qualified service for grant of pension is 15 years. Since the petitioner was remained absent without leave for 245 days he was not entitled to pension as he has not rendered the

service for complete 15 years as prescribed under the rules. When the petitioner was in reservation it was the condition of service that he could be required to render colour service as and when required. Therefore his claim that the colour service rendered by him from 14.9.1971 to 20.5.1972 to be counted towards service is not tenable at law.

4. Learned counsel for the respondents has pointed out that the petitioner was declared deserter as he remained absent without leave w.e.f. 5.2.1965 till 20.10.1965 and he was awarded 28 days imprisonment and 14 days detention in military custody under Section 39(1) of the Army Act, 1950. The period of absence was treated as non-qualified service for pension and the same is 258 days. The petitioner has attended biennial training as per the terms and conditions of service and therefore he is not entitled to any benefit for the same. The preparation of pension preferred by the unit through which the petitioner attached does not give any right to pension because the final decision regarding eligibility for pension was taken by the record office of the unit at Lucknow in consultation with Controller of Defence Accounts (Pension), Allahabad. In the case of the petitioner record office of the Army Medical Corps on receipt of the pension papers pertaining to the petitioner from Army Medical Corps Centre and School, Lucknow observed that the petitioner has deficiency in service for 245 days rendering him ineligible for pension. It is the discretion of the Officer Commanding who is empowered under the Army Act to award punishment set out in the provisions of the Army Act and the petitioner was accordingly punished for absence under Sec.39(1) of the Army Act and subsequently instead of discharging from service the period of absence was taken as punishment and his pay and allowances for the said period of absence were forfeited which resulted into non-qualifying service for service pension.

5. The petitioner on his behalf several representations were made and those representations were considered by the competent authority and same was replied at the relevant time vide different letters. In stead of that the record office of Army Medical Corps has taken up the case of the petitioner with the Army Headquarter for obtaining special sanction of the Government to condone the said period of 245 days. The Army Headquarters has turned down the proposal of the Record Office by its letter dated 19.4.1985. The petitioner's case was turned down by the highest authority in the year 1985. The deficiency in service

for grant of pension can be condoned upto 180 days under the Rules and deficiency of more than 180 days which is 245 days in the case of the petitioner cannot be condoned as the petitioner has rendered less than pensionable service of 15 years and hence he is not entitled for the service pension.

6. As per para 125 of the Pension Regulations, 1961, the maximum period of deficiency in service which can be condoned for service pension is 180 days and, therefore, the deficiency of 245 days in the case of the petitioner cannot be condoned. Hence the petitioner's claim is barred by delay and laches and therefore this petition deserves to be dismissed.

7. The contention of the learned counsel for the petitioner is that though the colour service of the petitioner from 18.11.1962 to 18.11.1969 was deficient by 245 days due to unauthorised absence from 5.2.1965 to 19.10.1965 for that deficit period the petitioner has been punished but due to his very good conduct and performance he was called on colour duty and he joined on 14.9.1971 and he continued on colour duty till 30.5.1972 thereafter he was retransferred to reservation establishment. That period amounts to 258 days. Thus the petitioner has also worked on colour service for 258 days though his earlier colour service was deficient by 245 days. Thus the colour service of the petitioner is more than required colour service i.e. 7 years and he also worked on reservation establishment for more than 8 years. Thus he has completed and worked for more than the required pensionable service. It appears that the authorities have not considered in this light the representation of the petitioner that petitioner was called on for the colour duty from 14.9.1972 and worked on colour service till 30.5.1972 i.e. 258 days.

8. Further contention of the learned counsel for the petitioner is that, it is not a case of condonation of delay where the authorities is empowered to condone delay of 180 days in which the subsequent colour service has not been included for calculating complete service for pension service. Hence he requested the Court to direct the highest authority of the respondents to consider their representations in the light that the petitioner has subsequently worked on colour service for 258 days from 14.9.1971 to 30.5.1972. If this period is calculated and added to the period 18.11.1962 to 18.11.1969, seven years colour service would be completed and the petitioner has already worked on reservation establishment for more than 8 years. As such, petitioner

would be entitled to the pensionary benefits as required under the rules.

9. In the facts and circumstances, I think it desirable to dispose of this petition with appropriate direction to the parties concerned that the petitioner will make a representation to the highest authority i.e. respondent No.2 - The Director General of Medical Services (Army), D.G.M.S., 3D, Adjutant General Branch, Army Head Quarters, DHO PO, New Delhi, within four weeks from today. In case such representation is made to the respondent authority by the petitioner in the specified period as stated above, the authority - respondent No.2 will decide the same by speaking order in accordance with law in the light of the observations of the Court and the contention raised by the learned counsel for the petitioner within two months thereafter. Rule is discharged. No order as to costs.

(Kundan Singh, J.)

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